LEOLARIS (M) SDN BHD

v.

RHB BANK BHD

HIGH COURT MALAYA, KUALA LUMPUR
RAMLY ALI J
[SUIT NO: D5-22-2037-2002]
28 JANUARY 2009

BANKING: *Banker and customer - Duty of customer - Customer failing to supervise its accountant and verify its banking transactions - Whether customer negligent - Whether customer had negligently facilitated forgery and/or fraud - Bills of Exchange Act 1949, s. 73A*

BANKING: *Cheque - Forged cheques - Duty not to facilitate fraud - Plaintiff failing to supervise its accountant and verify its banking transactions - Whether plaintiff lax in supervising own financial affairs - Whether plaintiff negligent*

The plaintiff operated a current account with the defendant bank. The defendant paid out some 31 cheques purportedly drawn by the plaintiff amounting to RM138,997.79. It then debited the plaintiff's account with the same amount. The plaintiff claimed that the signatures on all the cheques were forgeries and were not signed by any of the plaintiff's authorized signatories. The plaintiff contended that the defendant had no authority to pay the said cheques and the defendant had made payment contrary to the mandate given by the plaintiff. The plaintiff sought *inter alia* to recover the sum debited by the defendant.

Held (dismissing the claim with costs):

(1) At all times, the defendant had complied with the terms agreed with the plaintiff and stated in the Opening of Account Form. (para 7 & 8)

(2) Although Juliana Siew ('Siew') – an employee of the plaintiff – was not expressly named by the plaintiff as its authorized representative, Siew had by her conduct represented herself as the authorized representative of the plaintiff to liaise with the defendant on all banking matters in relation to the plaintiff's current account. Her name was on the specimen card and the defendant always called her on the plaintiff's banking matters. It was thus reasonable for the defendant to infer that Siew was

A the authorized representative of the plaintiff in relation to banking matters or in respect of the operation of its current account. (paras 9, 10 & 11)

(3) The cheques were encashed by the defendant in its ordinary course of business and in good faith. The defendant had complied with all the normal procedures for such purpose. There was no element of negligence or careless conduct by the defendant's officers. Sections 95, 82(1) and 85(1) of the Bills of Exchange Act 1949 were clearly in favour of the defendant. (paras 17, 18, 19, 20 & 21)

(4) The forgery and/or fraud allegedly committed by Siew when she was the plaintiff's employee and/or officer was contributed to by the plaintiff's own negligence. The plaintiff had breached its duties: (i) to supervise and monitor Siew's duties as the plaintiff's accountant and/or corporate administrator; (ii) to check the cheque books issued by the defendant and to check all the banking transactions carried out with the defendant on a regular basis. The plaintiff was thus negligent. Section 73A of the Bills of Exchange Act 1949 was applicable in the instant case. *Public Bank Bhd v. Anuar Hong & Ong* (HC) (foll). (paras 22-27)

Case(s) referred to:
Public Bank Bhd v. Anuar Hong & Ong [2005] 1 CLJ 289 HC ***(foll)***

Legislation referred to:
Bills of Exchange Act 1949, ss. 73A, 82(1), 85(1), 95

For the plaintiff - RS Sothi; M/s Watson Peters & Mohd Fuad
For the defendant - Mahathir Abdullah; M/s Raslan Loong

Reported by Andrew Christopher Simon

JUDGMENT

Ramly Ali J:

[1] In the present case, the plaintiff prays for the following remedies:

(a) a declaration that the defendant is not entitled to debit the plaintiff's current account with the amount of the respective cheques as enumerated in para. 4 of the statement of claim amounting to RM138,997.79;

(b) payment of the sum of RM138,997.79 as due and owing by the defendant to the plaintiff; A

(c) interest on the respective sum as stated in the respective cheques as enumerated in para. 4 of the statement of claim from the date of payment out of the account to date of judgment; and B

(d) interest on the judgment sum from date of judgment to date of full and final payment.

[2] The plaintiff is a private limited company and has a current account with the defendant bank. This fact is not in dispute. C

[3] It is also not in dispute that during the periods around 20 June 2002 to 21 June 2002, 26 June 2002 to 27 June 2002, 4 July 2002 to 5 July 2002, 9 July 2002 and 10 July 2002 to 12 July 2002, the defendant bank had paid 31 cash and third parties payee cheques for various amounts of RM5,000 and below purportedly drawn by the plaintiff and debited the plaintiff's account with the amount of RM138,997.79. D

[4] The plaintiff claims that the signatures on all the cheques were forgeries and were not signed by any of the plaintiff's authorized signatories. In the premise the plaintiff contends that the defendant had no authority to pay the said cheques and the defendant had made payment contrary to the mandate given by the plaintiff. E F

[5] To establish its case, the plaintiff had called four (4) witnesses during trial. The plaintiff's contentions are as follows:

(a) there were "obvious difference" between the signatures on the cheques drawn and the signature of PW2 in the specimen card; G

(b) the defendant has failed to observe well-established and normal banking procedures;

(c) the plaintiff has failed to cross-examine the plaintiffs' witnesses on material issues; and H

(d) admission by the defendant's witnesses.

Issues To Be Decided

[6] After going through the whole trial the court finds that the issues to be decided by this court are as follows: I

A (a) what are the terms between the plaintiff and defendant in respect of the opening of the current account between the plaintiff and defendant;

(b) whether Ms Juliana Siew was the plaintiff's authorized
B representative in respect of the plaintiff's banking transaction and the operation of the plaintiff's account with the defendant;

(c) whether the defendant has complied with all the procedures and common banking practice in the approval and payment of the 31 cheques in dispute; and

C

(d) whether the fraud allegedly committed by Juliana Siew was contributed by the plaintiff's own negligence.

[7] On the 1st issue, the court finds that the plaintiff in opening the current account No. 21444600010440 with the defendant
D (marked as "P5"), did represent and agree with the defendant *inter alia* the following:

(a) that the authorized signatories of the cheques drawn by the plaintiff would be Gordon Stuart Bell, William Leslie Addington
E (PW1), John E Dixon (PW2) and Ling Hee Keat where the defendant was to refer to the specimen authorized signatures in the specimen card marked as "P4".

(b) that the signatories for cheques drawn by the plaintiff for RM5,000 and below would be any one of the four authorized
F signatories and for cheques in excess of RM5,000 would be any two of the four authorized signatories;

(c) that the plaintiff's employee Ms Juliana Siew (Siew) would be the plaintiff's contact/liaison person.

G **[8]** As such, the court is satisfied that at all times, the defendant has complied with the terms stated in the opening of account form ("P5").

[9] On the issue whether Siew was the plaintiff's authorized
H representative in respect of the plaintiff's banking transaction and the operation of the plaintiff's account with the defendant, the court is of the view that although Siew was not expressly named by the plaintiff as the authorized representative of the plaintiff, she had by conduct represented herself as the authorized representative of the
I plaintiff to liaise with the defendant on all banking matters in relation to the current account with the defendant. From the

evidence of DW1, DW2 and DW3, Siew was the only person from the plaintiff who has liaised with the defendant on all banking matters.

[10] It is not disputed that the contact person named in the specimen card ("P4") was Siew. At all material times, the defendant has never received any other letter from the plaintiff appointing and naming the authorized representative. DW2 testified that if there were any banking matters which requires the confirmation or verification of the plaintiff, the bank would call and liaise with Siew, no one else.

[11] As such, in the absence of such letter from the plaintiff and further from the conduct of Siew, it was reasonable for the defendant to infer impliedly that Siew was the authorized representative of the plaintiff in relation to banking matters or in respect of the operation of the current account with the defendant.

[12] The next issue is whether the defendant has complied with all the procedures and common banking practice in the approval and payment of the cheques in dispute. There is evidence to show that the defendant never received any calls from the plaintiff to stop payment of the cheques. DW2 confirmed that the defendant had complied with all the bank's procedure in approving payment of the said cheques. In July 2002, DW2 was informed of the plaintiff's allegation that there were unauthorized withdrawal from the plaintiff's account. At the time of withdrawal DW2 never suspect that the cheques were forged. There was no reason to suspect because DW2 had compared the specimen signatures and the signature on the said cheques, and found that they tallied with the signature of Mr. John E. Dixon (as in the specimen signature card).

[13] DW4, is the Unit Head of SPICK – KL, Centre which is a cheque clearing centre of the defendant. According to him the procedure for processing and clearing of cheques is as follows:

(a) the officer will check the indorsements on the said cheques whether they were properly entered namely, the date of the said cheques to ensure the cheques were not post-dated, the amount drawn and that the account number which the cheques are debited is the correct account;

(b) verify the limit drawn on the cheques as to whether one or more signatures of the persons authorized by the bank customers are required.

(c) verify the signature by comparing the signature on the cheque with the signature in the bank's specimen signatures database system.

[14] To check and verify the signatures of the drawer, SPICK officers, use an internal system were as the bank's customers' signature cards are scanned into a database which is accessible by the officers during image verification process.

There is an image of the specimen signature card kept in the bank's system which is accessible by the officers, while processing the cheques. Once the indorsements are verified to be correct, the cheques will be cleared and monies will be credited into the payee's account. Before approval of the cheque, there is no requirement for the bank to first verify the cheque with the customer, if the amount drawn in each does not exceed RM5,000 and if there are no irregularities such the payee's name being of suspicious matters; where the signature does not match the signature in the specimen cards or where the date on the cheques are post-dated.

[15] The evidence of DW2 throws more light as to the procedure taken in processing and clearing the said cheques in question. His evidence are as follows:

(a) first, the bank teller will validate the said cheques presented over the counter and once validated, the cheques will be brought before him as the operations officer for approval of payment.

(b) once he received the said cheques, he would have checked that the indorsements on the said cheques presented to him were properly entered namely, the date of the said cheques, the amount drawn and that amount drawn was debited from the correct account;

(c) in this case, for the cheques by the plaintiff, he further checked and noted that each cheque was stamped with the plaintiff's company rubber stamp;

(d) he also verified the limit drawn on the cheques. In this case, since the amount of the said cheques was below the limit of RM5,000, only one signature of the persons authorized by the plaintiff was required;

(e) then, he verified the signature by comparing the signature in the specimen signature card (P4) provided by the plaintiff;

(f) once the signature tallied and in order, I approved the payment for the said cheques and handed the said cheques back to the bank teller who will then take out the monies from the bank's register for payment over the counter.

[16] The defendant's witnesses (DW1, DW2, DW3) confirmed having checked the signatures of the drawer in the said cheques and upon comparison they found that the signatures tallied with the signature of Mr. John E. Dixon as in the specimen signature card.

[17] On the balance of probabilities, the court finds that the said cheques, were encashed by the defendant in its ordinary course of business and on good faith. The defendant had complied with all the normal procedures for that purpose. There is no element of negligence or careless conduct by the defendant's officers.

[18] Section 95 of the Bills of Exchange Act 1949 defined "good faith" as an act done honesty whether it is done negligently or not.

[19] Section 82(1) of the same Act provides:

> Where a banker in good faith and in the ordinary course of business pays a cheque drawn on him which is ... irregularly indorsed, he does not, in doing so incur any liability by reason only of the ... irregularity in, indorsement, and he is deemed to have paid it in due course.

[20] Section 85(1) of the same Act provides that where a banker in good faith and without negligence receives payment for a customer of an instrument and the customer has no title or defective title to the instrument, the banker does not incur any liability to the true owner of the instrument.

[21] All the provisions cited above clearly are favourable to the defendant's case.

[22] Juliana Siew, the person who is alleged to have committed the forgery/fraud was at all material times an employee/officer of the plaintiff. The court is of the view that the said forgery/fraud (if at all) was contributed by the plaintiff's own negligence. It was the duty of the plaintiff to do the following in respect of the account and Julianna Siew:

(a) to supervise Siew and monitor her duties as the plaintiff's accountant/corporate administrator;

(b) to conduct checks on the plaintiff's cheque books which was issued by the defendant and check all the banking transactions carried out with the defendant on a regular basis.

[23] The court is also of the view that the plaintiff was in breach of the above mentioned duties and therefore was negligent in that:

(a) failing to supervise or properly supervise Siew at all material times;

(b) failing to ensure that Siew carried out her duties honestly and in good faith;

(c) failing to conduct check or any regular checks on the utilization of the issued cheque books;

(d) entrusting the custody of issued cheque books to Siew and entrusting the operation of the banking transaction entirely to Siew; and

(e) failing to take any care and caution or any proper care and caution as regards to their monies.

[24] The evidence clearly shows that:

(a) Siew was entrusted with the keeping of the cheque books and a fair number of administrative matters of the plaintiff's office. She is also the office manager and reviewed invoices from creditors and sign all payment vouchers. She also prepared cheques;

(b) no one actually supervises Siew's work;

(c) the other person who has access to the safe box containing the plaintiff's cheque books, the General Manager, Mr. Siddle was not called by the plaintiff to testify;

(d) the Directors of the plaintiff did not oversee or supervise Siew and they were not involved with the day to day management of the plaintiff's account with the defendant;

(e) no member of the Board of Directors were permanently at the management office; and

(f) the Directors themselves cannot recall how many cheque books were requested at the time of opening.

[25] In this regard, the court is in full agreement with the decision of the High Court in *Public Bank Bhd. v. Anuar Hong & Ong* [2005] 1 CLJ 289, where it was held:

> The customer clearly owes a duty not to facilitate fraud ... the Respondent as employer appeared to have been rather lax in exercising its supervision in respect of its financial affairs ... the Respondent has clearly failed to exercise due care in protecting their own interest from any misconduct of their own employees.

Further it also held that:

> The Bank cannot reasonably be required with their own legitimate commercial pressure and concerns to attend to, to be more vigilant in the Respondent's interest than the Respondent himself. A Bank dealing with hundreds or thousands of customers who have their own practice and habits ... it is extremely onerous to impose on every officer a duty to communicate with every customer before they *bona fide* honour a cheque in the sums represented by the cheques in issue in this case.

[26] The court will also refer to s. 73A of the Bills of Exchange Act 1949 which provides:

> Notwithstanding section 24, where a signature on a cheque is forged or placed thereon without the authority of the person whose signature it purports to be, and that person whose signature it purports to be knowingly or negligently contributes to the forgery or the making of the unauthorized signature, the signature shall operate and shall be deemed to be the signature of the person it purports to be in favour of the person who in good faith pays the cheque or takes the cheque for value.

[27] On the facts of the present case, the court finds that s. 73A of the Act applies in the present case.

Conclusion

[28] Based on the reasons set out above, the court finds that on the balance of probabilities, the plaintiff has failed to establish its claim against the defendant. Therefore the plaintiff's claim against the defendant is dismissed with costs.